

**R E M A R K S**

Claims 1, 3 to 8 and 10 to 12 are in the case.

With this amendment, Claim 1 has been revised to further define the elongated slots and to include the limitation of previous Claim 9. Claim 9 is now cancelled. Claim 10 has been amended in view of the changes to Claim 1. Claims 11 and 12 are also amended to include the limitations added to Claim 1.

Entry of the instant amendment is respectfully requested on the grounds that it now places the application in order for allowance.

Initially, it is respectfully submitted that the making of the Office Action of May 23, 2005 "Final" is premature. The new ground of rejection set forth by the Examiner was not necessitated by Applicant's amendment. The amendment to Claim 1 was to provide proper antecedent basis to overcome the objection under 35 USC 112 in the previous Office Action.

Irrespective of the above, it is submitted by Applicant that the claims clearly and patentably define over the prior art set forth by the Examiner. Claims 1 and 3 to 12 were rejected under 35 USC 103(a) as allegedly being unpatentable over Feldman in view of Dion and Mosse et al. As noted by the Examiner, Feldman is silent about an arrangement wherein there are provided a plurality of elongated slots in the downwardly extending wall as well as a nonsoil growing medium within the cavity and which growing medium includes mycorrhizal fungi, with the soil being on top of the non soil growing medium. It is also respectfully submitted that Feldman does not show the limitations added to Claim 1 - i.e. the slots being sized to have a width sufficient to permit root growth therethrough and the slots being defined by a plurality

of parallel ribs, each of the ribs having an arcuate inner and outer surface to prevent root damage.

The Examiner has stated that Dion teaches a soil insert having a plurality of elongated slots to allow water to be soaked up by the growing medium. The Examiner further alleges that it would have been an obvious substitution to substitute the perforations 55 of Feldman with slots on sidewall of the soil insert as taught by Dion. It is respectfully submitted that such a substitution would not be "obvious" and indeed, would be undesirable. To do so would clearly permit the soil to escape from the container into the water, a highly undesirable result. It is well settled in patent law that an inventive combination cannot be anticipated by finding individual features separately in the prior art and combining them in a piecemeal manner to show obviousness. Even further, when the combination of the references would lead to an inoperative or undesirable result, then certainly obviousness cannot be alleged.

The Examiner has relied on Mosse et al for its teaching relating to mycorrhizal fungi. In this regard, the Patentee merely teaches a process for the production of such fungi. However, there is no teaching of the desirability of providing a gardening system wherein a portion of the system uses a non soil growing medium on which there is placed a soil with the mycorrhizal fungi being in the non-soil growing medium.

As previously stated, Claim 1 now also includes the limitation of the elongated slots being defined by a plurality of parallel ribs with the ribs having an arcuate inner and outer surface. This limitation was previously present in old Claim 9. In the Office Action, with respect to old Claim 9, the Examiner refers to Figure 5 of Dion which he

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alleges shows the arcuate ribs. In looking at Figure 5, as referred to by the Examiner, it is not seen where any of the ribs have an arcuate inner and outer surface to permit root growth therethrough. As the drawing does not show what the Examiner alleges, such a rejection is not supported. Furthermore, there is absolutely nothing within the four corners of this patent which would lead one to such a structure.

For the above reasons above, it is respectfully submitted that Claim 1 clearly and patentably defines over the prior art.

Independent Claims 11 and 12 contain essentially the same limitations as Claim 1 and are likewise believed to be allowable for the reasons set forth regarding the allowability of Claim 1.

With respect to Claim 10, this claim recites that the ribs are made of a compliant material to allow root growth therethrough. The Examiner again refers to Figure 5 of Dion. It is not understood how this Figure could show a "compliant" material. A thorough examination of the patent does not disclose one instance where the Patentee mentions such a property of the structure.

In view of the above, it is believed that this application is now in order for allowance and such action is respectfully solicited.


Respectfully,



Eric Fincham  
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the Commissioner for Patents, Alexandria, VA 22313-1450 at Fax No. (571) 273-8300 on the date set forth below.

  
Eric Fincham, Reg. 28,201

July 25, 2005  
Date